Leach Corporation *and* International Association of Machinists and Aerospace Workers, District Lodge 94, Local Lodge 102, AFL–CIO. Cases 21–CA–28385 and 21–CA–28475

September 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

There are two principal issues in this case. The first is whether the judge correctly determined that the complaint allegations predicated on the Union's January 21, 1992 unfair labor practice charge in Case 21–CA–28475 (as amended on April 6, 1992), alleging that the Respondent violated Section 8(a)(5) and (1) of the Act by repudiating its collective-bargaining agreement with, and withdrawing recognition from, the Union, were time-barred under Section 10(b).[1] The second issue is whether the judge correctly determined that absent the 10(b) bar, the Respondent would have violated the Act by repudiating the collective-bargaining agreement and withdrawing recognition.[2]

For the reasons set forth below, we do not agree with the judge that the contract repudiation and withdrawal of recognition allegations are time-barred. With respect to the merits, we agree with the judge, for the reasons set forth in his decision, that the Respondent was obligated to adhere to the collective-bargaining agreement and recognize the Union.

I. FACTS

The facts are fully set forth by the judge. They are essentially as follows.[3]

The Respondent and the Union were parties to a collective-bargaining agreement covering the production and maintenance employees at the Respondent's Los Angeles Relay Division (LARD) for the period October 1, 1988–October 22, 1991.

During 1990, the Respondent studied the feasibility of changing from a ''batch'' method of production to a ''world class manufacturing just-in-time'' (just-in-time) method of production. Spatially, however, the Los Angeles facility could not accommodate the contemplated just-in-time method, and the Respondent was also considering relocating the Los Angeles Relay Division to its Buena Park facility, which could accommodate the just-in-time method.[4]

On February 1, 1991,[5] the Respondent notified the Union that it had decided to close permanently the Los Angeles plant and to relocate the LARD operations to Buena Park. The Respondent told the Union that it anticipated that the closure and relocation would begin in July and be completed on September 15.

On March 20, the parties met for the first time to discuss this matter. The Respondent stated that it considered the Buena Park facility to be a new and different operation from LARD, to be laid out in a just-in-time mode, requiring different employee skills, duties, and classifications, for which LARD employees relocating to Buena Park would have to be retrained. At this meeting, and at subsequent meetings on April 23 and May 14, the Union requested that the Respondent recognize it as the representative of the LARD employees relocating to Buena Park and that it apply the LARD collective-bargaining agreement to cover those employees on their relocation to Buena Park.[6] On all three occasions, the Respondent refused to recognize the Union or apply the collective-bargaining agreement at Buena Park.

On June 21, the Union asked in writing that the Respondent provide it with, inter alia, the names of LARD employees who were going to be relocated to Buena Park ''as of the first week in July 1991, or on or about that time,'' and the names of the departments and positions to which those employees would be relocated at Buena Park. The Respondent denied this request for information on June 26.

The actual relocation of LARD employees to Buena Park began on July 3 and was completed about September 17. Approximately 280 of the 340 LARD unit employees relocated to Buena Park. Generally, each relocating employee was terminated at LARD by the Respondent on a Friday and then rehired at Buena Park by the Respondent on the following Monday. The first day of actual relocation of employees, however, was a Wednesday, July 3. On that date, about 35 LARD em-

[1] Sec. 10(b) states in pertinent part that ''[N]o complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the Board.''

[2] On April 1, 1993, Administrative Law Judge James L. Rose issued the attached decision. The General Counsel, the Charging Party, and the Respondent filed exceptions and supporting briefs (including a supplemental supporting brief filed by the Charging Party), the Respondent filed a brief in support of the judge's decision and a brief in response to the Charging Party's exceptions, and the General Counsel and the Charging Party filed briefs in response to the Respondent's exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

[3] In sec. III,B,2 of his decision, the judge also found that the Respondent violated Sec. 8(a)(5) and (1) as alleged in Case 21–CA–28385 by refusing to provide the Union with certain requested information. Although there are no exceptions to this finding, and we affirm it, the facts on which it is based are set forth infra because they are also relevant to the issue of whether the judge correctly determined that the Union's contract repudiation—withdrawal of recognition charge in Case 21–CA–28475—was not timely filed under Sec. 10(b).

[4] The judge discusses these background matters in greater detail, in the first several paragraphs of sec. III,A of his decision.

[5] All the following dates are in 1991, unless stated otherwise.

[6] The Union did not at that time represent any of the employees already working at Buena Park in other divisions.

ployees relocated to Buena Park. Significantly, the record does not otherwise show how many employees were relocated on any particular date. When the relocation was completed in mid-September, the new Buena Park work force engaged in relay manufacturing was made up entirely of former LARD unit employees.

On August 6, the Union asked in writing that the Respondent provide it with the names of LARD employees who had been relocated to the Buena Park facility, and the names of their new departments and classifications. The Union did not receive a response to this request.

The Respondent and the Union met again on September 17. The Union inquired as to the nature of the work being performed and the product being manufactured at Buena Park, asserting to the Respondent that such information was relevant to the Union's ability effectively to represent the LARD employees who were affected by the relocation of operations to Buena Park. The Respondent declined to furnish this information. The Union asked the Respondent to recognize it as the representative of the production employees at Buena Park. The Respondent refused to do so.

On November 21, the Union filed the refusal-to-provide-information unfair labor practice charge in Case 21–CA–28385. On January 21, 1992 (as amended April 6, 1992), the Union filed the contract repudiation—withdrawal of recognition charge in Case 21–CA–28475.

II. THE JUDGE'S DECISION

The judge found that the unfair labor practices alleged in the charge in Case 21–CA–28475 (i.e., the Respondent's refusal to recognize the Union as the representative of the former LARD unit employees who had relocated to Buena Park, and its failure to apply the Relay Division collective-bargaining agreement to them) occurred for 10(b) purposes when the first group of unit employees actually relocated to Buena Park on July 3, more than 6 months prior to the January 21, 1992 filing of the charge. For the reasons discussed below, we disagree with the judge on this question, and we find under the circumstances of this case that the Respondent has failed to satisfy its burden of showing that the Union had notice of a violation of the Act more than 6 months prior to the filing of the charge in Case 21–CA–28475.

III. DISCUSSION

Our disagreement with the judge is a narrow one because we agree with his recitation of the relevant legal principles. As noted by the judge, it is well established that ''a statement of intent or threat to commit an unfair labor practice does not start the statutory six months running. The running of the limitations period can begin only when the unfair labor practice occurs.'' *NLRB v. Al Bryant, Inc.*, 711 F.2d 543, 547 (3d Cir. 1983).[7] It is also firmly established that the 10(b) period commences only when a party has clear and unequivocal notice of a violation of the Act. E.g., *Desks, Inc.*, 295 NLRB 1, 11 (1989). ''Further, the burden of showing such clear and unequivocal notice is on the party raising the affirmative defense of Section 10(b).'' *Chinese American Planning Council*, 307 NLRB 410 (1992).

In applying these principles here, we cannot agree with the judge that the Charging Party had knowledge of the facts necessary to support a ripe unfair labor practice charge on July 3, when the Respondent began to relocate employees to Buena Park. Under the Board's decision in *Harte & Co.*, 278 NLRB 947 (1986), a case cited by the judge, the Respondent would be obligated to recognize the Union at Buena Park and apply the existing contract only if, inter alia, ''transferees from the old plant constitute a substantial percentage—approximately 40 percent or more—of the new plant employee complement'' on ''*the date that the transfer process was substantially completed*.'' Id. at 948, 949 (emphasis in original). As of the July 3 date the judge selected, the transfer process was not ''substantially completed.'' Rather, the process had just begun with the relocation of the first wave of approximately 35 employees. Accordingly, it was an error for the judge to conclude that on July 3 ''sufficient facts were in existence to sustain a finding of an unfair labor practice.''

Indeed, on this record, the earliest date that the Union can be charged with knowledge of a violation of the Act is September 17, a date well within the 10(b) period. This is so because the record shows only that the initial 35 employees were relocated on July 3 and that the relocation process was completed on September 17 with approximately 280 former LARD employees comprising the new Buena Park relay manufacturing work force. The record does not reveal how many employees had been relocated at any point in time after the July 3 start until the September 17 completion of the process. As the party with the burden on

[7] See also *NLRB v. Electrical Workers IBEW Local 112*, 827 F.2d 530 (9th Cir. 1987); *Teamsters Local 42 v. NLRB*, 825 F.2d 608, 615–616 (1st Cir. 1987).

Thus, in agreement with the judge, we reject the Respondent's contention that the 10(b) period began to run in mid-May when the Respondent stated that it did not intend to apply the collective-bargaining agreement or recognize the Union at the Buena Park facility. The Respondent's reliance on *Postal Service Marina Center*, 271 NLRB 397 (1984), in support of its argument in this regard is misplaced. The 10(b) standard that was employed in *Postal Service* applies to discriminatory discharge cases, but not to situations like those at issue here, involving contract repudiation and refusal to bargain. *United States Can Co.*, 305 NLRB 1127, 1141 (1992), enfd. 142 LRRM 2313 (7th Cir. 1993). See generally *Howard Electrical & Mechanical*, 293 NLRB 472, 475 (1989).

the 10(b) issue, the Respondent must be held accountable for this gap in the record.

In sum, the Respondent has failed to carry its burden of showing that the Charging Party had notice that a violation of the Act occurred before July 21, the beginning of the 10(b) period. On this record, September 17 is the earliest date on which the Union can be found to have had clear and unequivocal notice that *Harte*'s substantial-percentage-of-transferees requirement had been fulfilled.[8] The Union filed its charge in Case 21–CA–28475 on January 21, 1992, alleging unlawful refusal to recognize the Union at Buena Park, and filed its amended charge in that case on April 6, 1992, additionally alleging unlawful contract repudiation at Buena Park. September 17 is, of course, within the 6-month period prior to the January 21, 1992 filing of the charge.[9] Accordingly, we find, contrary to the judge, that the Union's charge in Case 21–CA–28475 was timely filed and that the allegations in that case are not barred by Section 10(b). Because we agree with the judge, for the reasons set forth in his decision, that on the merits the Respondent's conduct violated Section 8(a)(5) and (1) of the Act, we shall issue an appropriate remedial Order.

CONCLUSIONS OF LAW

1. At all times material, the Union has been the exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act of the Respondent's production and maintenance employees engaged in the manufacture of relays, as further described in article II, Recognition, of the October 1, 1988–October 22, 1991 collective-bargaining agreement between the Respondent and the Union.

2. By failing and refusing to provide the Union with certain requested information relevant to the Union's representation for collective-bargaining purposes of the employees described above, the Respondent has engaged in an unfair labor practice in violation of Section 8(a)(5) and (1) of the Act.

3. By failing and refusing to apply the above-mentioned collective-bargaining agreement to unit employees on their relocation from LARD to the Buena Park facility, the Respondent has engaged in an unfair labor practice in violation of Section 8(a)(5) and (1) of the Act.

4. By failing and refusing to recognize the Union as the exclusive collective-bargaining representative of the unit employees on their relocation from LARD to the Buena Park facility, the Respondent has engaged in an unfair labor practice in violation of Section 8(a)(5) and (1) of the Act.

5. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order that it cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we shall order the Respondent to provide the Union with the requested information. We shall also order the Respondent to apply the October 1, 1988–October 22, 1991 collective-bargaining agreement between the Respondent and the Union to the production and maintenance employees engaged in the manufacture of relays at the Respondent's Buena Park facility, as further described in article II, Recognition, of that agreement. Additionally, we shall order the Respondent to recognize the Union as the exclusive collective-bargaining representative of the production and maintenance employees engaged in the manufacture of relays at the Respondent's Buena Park facility, as further described in article II, Recognition, of the above-mentioned collective-bargaining agreement. Finally, we shall order the Respondent to make the above-described employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful refusal to apply the above-mentioned collective-bargaining agreement to them. Any amounts of money necessary to make employees whole under the terms of this remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), with interest computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Nothing in the Order shall be construed as requiring the Respondent to rescind any wage increases or other improved benefits or terms or conditions of employment which may have been afforded to the employees in question since their relocation to the Buena Park facility without a request from the Union.

ORDER

The National Labor Relations Board orders that the Respondent, Leach Corporation, Los Angeles and Buena Park, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

[8] Lack of clear and unequivocal knowledge by the Union of the unfair labor practices prior to September 17 is not attributable to any lack of diligence on the part of the Union in seeking relevant information about the relocation. Rather, it is at least partly attributable to the Respondent's unlawful refusal to provide the Union with the relevant information about the relocation that it requested during the period leading up to and during the relocation.

[9] There is no contention that the April 6, 1992 amended charge should be found to be untimely even if the January 21, 1992 initial charge is found to be timely. We agree with the judge that these two aspects of the case are intertwined, i.e., the repudiation of the contract and the refusal to recognize the Union are part and parcel of each other, coincident to the relocation of relay manufacturing operations from LARD to Buena Park. *Kelly–Goodwin Hardwood Co.*, 269 NLRB 33, 36–37 (1984).

(a) Refusing to provide International Association of Machinists and Aerospace Workers, District Lodge 94, Local Lodge 102, AFL–CIO (the Union) with requested information that is relevant and necessary to the Union's collective-bargaining representation of the employees of the Respondent.

(b) Refusing to apply the October 1, 1988–October 22, 1991 collective-bargaining agreement between the Respondent and the Union to the production and maintenance employees engaged in the manufacture of relays at the Respondent's Buena Park facility, as further described in article II, Recognition, of that agreement.

(c) Refusing to recognize the Union as the exclusive collective-bargaining representative of the production and maintenance employees engaged in the manufacture of relays at the Respondent's Buena Park facility, as further described in article II, Recognition, of the the October 1, 1988–October 22, 1991 collective-bargaining agreement between the Respondent and the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, provide the Union with information that is relevant and necessary to the Union's collective-bargaining representation of the employees of the Respondent.

(b) Apply the October 1, 1988–October 22, 1991 collective-bargaining agreement between the Respondent and the Union to the production and maintenance employees engaged in the manufacture of relays at the Respondent's Buena Park facility, as further described in article II, Recognition, of that agreement.

(c) Recognize the Union as the exclusive collective-bargaining representative of the production and maintenance employees engaged in the manufacture of relays at the Respondent's Buena Park facility, as further described in article II, Recognition, of the October 1, 1988–October 22, 1991 collective-bargaining agreement between the Respondent and the Union.

(d) Make the above employees whole, in the manner prescribed in the remedy section of this decision, for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful refusal to apply the above-mentioned collective-bargaining agreement to them; provided, however, that nothing herein shall be construed as requiring the Respondent to rescind any wage increases or other improved benefits or terms or conditions of employment which may have been afforded to the employees in question since their relocation to the Buena Park facility without a request from the Union.

(e) Preserve and, on request, make available to the Board or its agents for examination or copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Los Angeles and Buena Park, California, facilities copies of the attached notice marked ''Appendix.''[10] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to provide International Association of Machinists and Aerospace Workers, District Lodge 94, Local Lodge 102, AFL–CIO (the Union) with requested information that is relevant and necessary to its collective-bargaining representation of our employees.

WE WILL NOT refuse to apply the October 1, 1988–October 22, 1991 collective-bargaining agreement between us and the Union to the production and maintenance employees engaged in the manufacture of relays at our Buena Park facility, as described in the recognition clause of that agreement.

WE WILL NOT refuse to recognize the Union as the exclusive collective-bargaining representative of the production and maintenance employees engaged in the manufacture of relays at our Buena Park facility, as described in the recognition clause of the the October 1, 1988–October 22, 1991 collective-bargaining agreement between us and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, provide the Union with information that is relevant and necessary to its collective-bargaining representation of our employees.

WE WILL apply the October 1, 1988–October 22, 1991 collective-bargaining agreement between us and the Union to the production and maintenance employees engaged in the manufacture of relays at our Buena Park facility, as described in the recognition clause of that agreement.

WE WILL recognize the Union as the exclusive collective-bargaining representative of the production and maintenance employees engaged in the manufacture of relays at our Buena Park facility, as described in the recognition clause of the the October 1, 1988–October 22, 1991 collective-bargaining agreement between us and the Union.

WE WILL make the above employees whole for any loss of earnings and other benefits suffered as a result of our refusal to apply the above-mentioned collective-bargaining agreement to them.

LEACH CORPORATION

Paul H. Fisch, Esq., for the General Counsel.
William H. Emer, Esq., and *Kelly F. Watson, Esq.*, of Los Angeles, California, for the Respondent.
Herbert M. Ansell, Esq., of Los Angeles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge. These consolidated cases were tried before me on various days from November 3 through December 16, 1992. In Case 21–CA–28385, the charge in which was filed on November 21, 1991,[1] it is alleged that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to furnish certain requested information on and after June 21. The charge in Case 21–CA–28475 was filed on January 21, 1992, and alleges that the Respondent violated its bargaining obligations by refusing to apply the terms of a collective-bargaining agreement to employees transferred from one manufacturing location to another and refusing to recognize the Charging Party as the collective-bargaining representative of those employees.

The Respondent generally denied that they engaged in any unfair labor practices and raised certain affirmative defenses, including bar by operation of Section 10(b) and waiver.

All parties were represented by counsel and were given the opportunity to call, examine, and cross-examine witnesses. Following the hearing all counsel submitted briefs. On the record as a whole, including my observation of the witnesses, briefs and arguments of counsel, I make the following

[1] All dates are in 1991 unless otherwise indicated.

FINDINGS OF FACT

I. JURISDCTION

The Respondent is a Delaware corporation engaged in the manufacture of relays and related products for the aerospace industry and at the times material here, operated manufacturing facilities in Los Angeles and Buena Park, California. During the course of its business the Respondent annually ships finished products valued in excess of $50,000 directly to points outside the State of California. It is alleged, admitted, and I find that the Respondent is an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Charging Party, International Association of Machinists and Aerospace Workers, District Lodge 94, Local Lodge 102, AFL–CIO (the Union) is admitted to be, and I find is, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The material facts here are undisputed and may be briefly summarized. For many years the Union represented a unit of production and maintenance employees at the Respondent's Relay Division, which was located in Los Angeles. The Union and the Respondent had negotiated a series of collective-bargaining agreements covering those employees, the most recent of which was effective from October 1, 1988, through October 22, 1991.

At its Los Angeles facility, the Respondent manufactured relays (electronic switches) of various sizes, for use on aircraft. The plant consisted of 14 separate buildings and had become obsolete, particularly for the change in the manufacturing process which the Respondent intended to implement. The Respondent intended to change from the traditional ''batch'' method to ''world class manufacturing just-in-time.''

As explained by various of the Respondent's witnesses, the batch method is organized along functional lines, such that each employee is trained to do one specific piece of a product and does this repeatedly (in batches). After a particular function is completed, the unit is put into inventory until the employee who performs the next function is ready. Thus before a relay is finished, it will be put into and taken out of storage several times.

Among other things, just-in-time aims to reduce the amount of product handling and therefore increase employee productivity. One witness for the Respondent stated that the just-in-time process was invented by the Toyota Company and is as significant a step in increased productivity as the assembly line. With just-in-time, the team is more important than the individual employee and the finished product is more important than the component.

For just-in-time to work, so far as is material to the Respondent's relay operation, larger and more contiguous space is needed than was available at Los Angeles.

The Respondent's control and power division (or the control products division) was located at Buena Park. Although

the record is sketchy on the Buena Park operation, it appears that manufactured there were power and control systems for aircraft. These systems use groups of relays. The Power and Control Division had been moved to Buena Park in 1989, and thereafter some employees were transferred from Los Angeles to Buena Park. The Union has never represented the employees at Buena Park. Buena Park is about 19 miles from the Los Angeles facility.

By letter of September 27, 1990, the Respondent notified the Union that it was considering closing the Los Angeles facility and relocating the work at Buena Park. A feasibility study was done and in December 1990, employees at Los Angeles began training on just-in-time. And on February 1, 1991, the Respondent informed the Union that it was going to close Los Angeles and relocate to Buena Park, which would begin in July and be completed by September 15.

The parties first met to discuss this matter on March 20, at which time the Respondent stated that it considered the Buena Park facility to be a new and different operation from Los Angeles. The employees would be trained to do the many functions involved in making a completed relay, and when transferred from Los Angeles to Buena Park, would be given job classifications which did not exist in the Union's collective-bargaining agreement. Thus the Respondent would not be extending the collective-bargaining agreement to those Los Angeles employees who relocated to Buena Park.

At this time counsel for the Union requested an opportunity to view the Buena Park premises, which was then and thereafter denied.

The parties met again on April 23 and May 14. Again the Respondent stated that it would not recognize the Union or the collective-bargaining agreement as to employees working at Buena Park. Proposals and counterproposals concerning the work relocation were offered, but no agreement was reached.

On May 15, the Union filed a grievance relating to the Respondent's announced refusal to recognize it at Buena Park or apply the successorship clause of the contract. This was processed through various steps of the grievance procedure, but was withdrawn by the Union on October 18.

Finally, there were meetings between the parties on July 3 and September 17. And by letter of June 21, August 16, September 16, and October 8, certain information was requested by the Union, which the Respondent declined to furnish.

On July 3 the relocation process began. Approximately 280 of the 340 unit employees at Los Angeles took jobs at Buena Park. Each such employee was terminated on a Friday, and was rehired the next Monday. Each signed a form acknowledging the termination and rehire. Those who were not rehired at Buena Park for some reason were given severance pay. The relocation process was completed about September 15 and the Los Angeles facility was closed.

In evidence is a list of employees who were relocated, and samples of the termination and rehire forms. However, there is no indication of how many employees were relocated on which dates. Jimmy D. Owens, the Respondent's director of human resources, testified that the process began in the first week of July and ended on September 16 or 20. Employee Phan Ngo Anh Hong testified that she was relocated on July 3,[2] along with about 35 of the approximately 40 to 50 employees in her department. Ommie Neal and Ella Lewis, who worked in the same department, confirmed their relocation on July 3, and stated that only BA department employees were relocated then.

B. *Analysis and Concluding Findings*

1. Repudiation of the contract

In various factual settings, the Board has considered a company's relocation of bargaining unit work. In such cases, ''our task is to distinguish situations where the new facility is basically the same operation, simply removed to a new site, from those where the new facility is somehow a different operation from the original. . . . an existing contract will remain in effect after a relocation if the operations at the new facility are substantially the same as those at the old and if transferees from the old plant constitute a substantial percentage—approximately 40 or more—of the new plant employee complement.'' *Harte & Co.*, 278 NLRB 947, 948 (1986) (citations omitted).

The General Counsel and the Union argue that the former Los Angeles employees are doing the same work they did at the Los Angeles plant and since about 88 percent of them were relocated, the Respondent is obligated to abide by the contract (which expired subsequent to completion of the relocation). The Respondent contends that the way of making relays at Buena Park is so different from Los Angeles that it is really a different operation.

The crux of the Respondent's argument involves changing from the batch system to just-in-time. The Respondent contends that this was a fundamental change in the manufacturing process which resulted in changes in employee classifications, responsibilities, and supervision. I reject the Respondent's argument that changing the manufacturing process resulted in a different operation.

No doubt that just-in-time is very different from batch and that employees are required to be more flexible. However, the same people make the same product. The classification changes were not so significant as to require the Respondent to hire different people with more advanced skills or education. The Respondent retrained its existing work force. The components used and the way they are put together are the same at Buena Park as at Los Angeles, as are the finished relays. Just-in-time simply changes the way in which the product goes through the various assembly steps.

Though significant, just-in-time is not really different from any change in the manufacturing process resulting from advancing technology. Such changes in this industry occur from time to time. For instance, Jerry Clark, the Respondent's support operations supervisor, testified that 15 years ago the company changed from manual feed machines to automatic feed, a change which reduced the number of employees. Such also was a significant change in the manufacturing process, but clearly did not result in a different operation.

The move to Buena Park was required because the Los Angeles physical plant could not accommodate just-in-time. There is no indication in the record that had the Respondent been able to institute just-in-time at Los Angeles it would not

[2] The error in the transcript is noted and corrected.

have done so. Nor does the Respondent suggest that withdrawal of recognition would have been proper had the Respondent been able to implement just-in-time at Los Angeles. Clearly, had such been the case, withdrawal of recognition would not have been lawful. The same employees would have continued to do the same work. There would have been some changes in classifications and duties, but none in the fundamentals. The move to Buena Park was a fortuity, having itself little to do with the change in the manufacturing operation.

I therefore conclude that making relays at Buena Park was not somehow a different operation than making relays at Los Angeles. Since a substantial majority of the Los Angeles bargaining unit relocated, and constitute more than 40 percent of the Buena Park work force,[3] I conclude that the Respondent should have kept in effect its existing contract with the Union and should have continued to recognize the Union as the collective-bargaining representative for those employees engaged in manufacturing relays.

2. The refusal to furnish information

The Union requested certain information concerning the Buena Park operation which the Respondent refused to furnish, arguing, basically, that as it had no duty to recognize the Union for the Buena Park employees, it had no duty to furnish the information.

I reject the Respondent's defense, first because it assumes as correct the Respondent's position on the merits. Such is similar to a company arguing that it need not furnish information concerning a grievance because the grievance should be denied. The right to information is not dependent on the ultimate outcome of matter on which the union seeks it. The union is entitled to information so that it can effectively represent employees. The right to information is not restricted to those situations where the union would prevail.

Further, the right to information cannot be dependent on the company's determination of whether the information is necessary, or would be helpful. Thus, even if the Respondent was correct about the recognition issue, as the representative of the relocated employees the Union certainly had the right to have such information as would be necessary to perform its representative function. E.g., *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61 (3d Cir. 1965), enfg. 145 NLRB 152 (1963). By refusing to furnish the requested information, the Respondent violated its bargaining obligations under Section 8(a)(5).

3. The 10(b) bar

The charge in Case 21–CA–8385 was filed on November 21 alleging that the Respondent refused to furnish information from and after May. On January 21, 1992, the charge in Case 21–CA–28475 was filed alleging a violation of Section 8(a)(5) based on the relocation ''commencing in or about July 1991, and concluding in or about September 1991.''

The Respondent argues that it notified the Union that it intended to relocate the relay work and not honor the collective-bargaining agreement on various occasions prior to May 20. Therefore, Section 10(b) bars this action.

The General Counsel and Union agree that at meetings in February, April, and May the Respondent stated that it would not recognize the Union or continue in effect the collective-bargaining agreement. However, they point out that the relocation did not commence until July 3 and was not completed until September 15, which was within the 10(b) period.

For the following reasons, I conclude that Section 10(b) bars Case 21–CA–28475 relating to the relocation. To determine whether the 10(b) period has run, the first question is when the relocation was an actionable unfair labor practice. If this date was more than 6 months before the charge in Case 21–CA–28475 was filed, the second question is whether the charge in Case 21–CA–28385 would toll the time, and third, whether the unfair labor practice occurred within 6 months of that charge.

The Respondent argues that the relocation was a mere consequence of its announcement. Therefore, the announcement that it would not recognize the Union or keep in effect the contract as to relocated employees is controlling for 10(b) purposes, citing *Postal Service Marina Center*, 271 NLRB 397 (1984), wherein ''the Board will henceforth focus on the date of the alleged unlawful act, rather than on the date its consequences become effective.'' 271 NLRB at 399. The Respondent announced its intention February and on several occasions thereafter and before May 20.

However, this rule is applicable only where there has been a clear and unequivocal notice that an unfair labor practice has been committed. ''Further, the burden of showing such clear and unequivocal notice is on the party raising the affirmative defense of Section 10(b).'' *Chinese American Planning Council*, 307 NLRB 410 (1992).

Clear and unequivocal notice means that all the facts are in place to find an unfair labor practice, irrespective of whether all the consequences are known. On this I conclude the Respondent failed to carry its burden that the unfair labor practice occurred before the relocation began on July 3.

No doubt the Respondent announced that it intended not to recognize the Union after the employees were relocated to Buena Park. This does not mean, however, that it thereby committed an actionable unfair labor practice. At most such indicated an intent not to abide by its bargaining obligations in the future. Such is insufficient to start the 10(b) period. *NLRB v. R.O. Pyle Roofing Co.*, 560 F.2d 1370 (9th Cir. 1977), enfg. 222 NLRB 786 (1976).

Following its announcement, the Respondent in fact continued to recognize and bargain with the Union (except for refusing to furnish information). I conclude that the unfair labor practice with which the Respondent was charged in Case 21–CA–28475 did not happen until some employees had been relocated and this was on July 3. *Howard Electrical & Mechanical*, 293 NLRB 472 (1989).

This conclusion is not altered by the Union's contention in its grievance of May 15 (and its counsel's May 16 letter) that the Respondent was then in violation of the contract by refusing to recognize the Union with respect to relocated Relay Division employees. At that time, there had in fact

[3] All parties agree that should the Respondent be ordered to bargain, the appropriate unit would include only employees making relays, and the other Buena Park employees would be excluded. The relocated employees would constitute 100 percent of such a unit. But even if the only appropriate unit would be the entire Buena Park operation, it appears that the relocated Los Angeles employees would constitute more than 40 percent of the total.

been no relocation. The Union's stated position does not change the facts of what happened and when.

Thus, I conclude that it was not until the Respondent began relocating employees and refusing to recognize the Union as to them were sufficient facts in existence to sustain a finding of an unfair labor practice. But on July 3 (or at least before July 21) the Respondent had committed the unfair labor practice alleged and this was more than 6 months before the charge in Case 21–CA–28475 was filed. Therefore, the complaint is barred unless either the earlier charge can be said to cover these events or the Respondent's continued refusal to recognize the Union after July 22 is considered an independent unfair labor practice.

The charge in Case 21–CA–28385 states: ''O/A May 1991 and since said date, particularly on September 17, 1991, Employer has refused to furnish Union with information relevant to its needs and responsibilities to properly represent bargaining unit employees. By said acts and conduct, Employer has intimidated, coerced, and restrained employees, and has failed to bargain collectively within the meaning of Section 8(a)(1), (a)(5) and 8(d) of the Act.'' A complaint based on this charge was issued on January 15, 1992, alleged that the Respondent violated Section 8(a)(5) by refusing to furnish requested information.

In order for the Respondent's refusal to abide by the contract not to be barred, it must be found that the early July activity is covered by the charge in Case 21–CA–28385. In order for this to be found, the complaint allegations in Case 21–CA–28475 must be ''closely related'' to those alleged in the Case 21–CA–28385 charge. I conclude they are not closely related.

In *Redd-I, Inc*., 290 NLRB 1115 (1988), the Board announced the test to be used in determining whether a timely charge is sufficient under Section 10(b) for otherwise untimely complaint allegations. The Board held that complaint allegations not in the charge would nevertheless be considered not barred if they were closely related to those in the charge. The Board said:

> In applying the traditional ''closely related'' test in this case, we will look at the following factors. First, we shall look at whether the otherwise untimely allegations are of the same class as the violations alleged in the pending timely charge. This means that the allegations must all involve the same legal theory and usually the same section of the Act (e.g., 8(a)(3) reprisals against union activity). Second, we shall look at whether the otherwise untimely allegations arise from the same factual situation or sequence of events as the allegations in the pending timely charge. This means that the allegations must involve similar conduct, usually during the same time period with a similar object (e.g., terminations during the same few months directed at stopping the same union organizing campaign). Finally, we may look at whether a respondent would raise the same or similar defenses to both allegations, and thus whether a reasonable respondent would have preserved similar evidence and prepared a similar case in defending against the otherwise untimely allegations as it would in defending against the allegations in the timely pending charge. 290 NLRB at 1118.

The Respondent's repudiation of the contract as to relocated employees is fundamentally distinct from its the refusal to furnish information. Indeed, the General Counsel treated these matters as different by issuing a complaint which included only the refusal to furnish information allegation and subsequently issuing the consolidated complaint. Apart from the relationship of the two unfair labor practices to the Respondent's closure of the Los Angeles facility, they arise from different conduct and involve different legal theories and defenses. Accordingly, I conclude there is an insufficient factual or legal nexus between the charge in Case 21–CA–28385 and the allegations in Case 21–CA–28475 to withstand the defense of the 10(b) bar. *Nippondenso Mfg. U.S.A.*, 299 NLRB 545 (1990).

To find that the charge alleging a refusal to furnish information suffices for a complaint alleging refusal to apply a collective-bargaining agreement would be contrary to the policy of Section 10(b) and would excuse the Union for not filing a timely charge. Here, there was no attempt at deception on the Respondent's part. Indeed, the Respondent was very forthright in its announcement to the Union that it would not apply the contract to the employees once they were relocated. The Respondent told the Union this in February and on many occasions thereafter, and on May 15 the Union filed a grievance alleging this to be a violation of the contract. Still no charge was filed as to this conduct until January 22, 1992—nearly a year after the Respondent's first announced intention to repudiate the contract and more than 6 months after the relocation began.

The Union contends that the complaint is not time-barred because the Respondent's unfair labor practice continued within 6 months of the charge in Case 21–CA–28475. In *A & L Underground*, 302 NLRB 467 (1991), the Board overruled those cases applying a continuing violation theory as to total contract repudiation. ''We find that the policies underlying Section 10(b) are best effectuated by requiring a party, in order to avoid the time-bar, to file an unfair labor practice charge within 6 months of its receipt of clear and unequivocal notice of total contract repudiation.'' Id. at 468.

The Board held that where, as here, there has been a total contract repudiation, as distinct from an ad hoc breach, the limitation period begins to run from the time the charging party has clear and unequivocal notice. To find a charge timely at any time within the contract term and for 6 months thereafter would do ''injury to the stability of collective-bargaining relationships, and (it) impair(s) the process for adjudicating those charges.'' Id. at 468.

Here, there was clear and unequivocal notice from the Respondent to the Union that it would not abide by the contract as to relocated employees, followed by relocation and nonadherence to the contract. These events came together in early July and this is when the unfair labor practice occurred. This was not a breach of contract. It was a total repudiation as to those employees relocated, even though the Respondent continued to honor it as to the unrelocated employees. Thus, the Union was required to file a charge within 6 months of July 3 when the Respondent began to relocate employees. It did not do so. Therefore, I conclude that the complaint allegation relating to the contract repudiation is time-barred.

Intertwined with the contract repudiation is the Respondent's withdrawal of recognition of the Union as the representative of Relay Division employees. Although the Union

may well have the support of a majority of Buena Park employees in an appropriate unit, the withdrawal of recognition was coincident with the repudiation of the contract. Therefore, I conclude that a general bargaining order would be barred by Section 10(b), for the reasons given above.

4. The defense of waiver

On June 14, 1989, the Respondent and the Union entered into an agreement which would cover any move of production equipment from Los Angeles to Buena Park. The agreement set forth the conditions under which displaced Los Angeles employees could be hired at Buena Park, but specifically stated that it was ''not intended and shall not be construed as an express or implied recognition by the Company of the Union as the bargaining representative of any employees of the Company's Buena Park Operation.''

The Respondent contends that this agreement was meant to cover the situation where Los Angeles work would be relocated to Buena Park and that the Union thereby waived the Respondent's obligation to recognize the Union as to relocated employees.

Whatever the merits of the Respondent's argument, suffice it that the agreement expired by its terms on June 13, 1991. Since this agreement was not in effect at the time the Respondent began relocating Los Angeles employees to Buena Park, it cannot operate as any kind of a waiver of the Union's representational rights.

REMEDY

Having concluded that the Respondent violated the Act by not furnishing certain requested information to the Union, I shall order that it cease and desist therefrom. However, the information was necessary for the Union in policing the contract as to the relocation of work from Los Angeles to Buena Park. Since I have concluded that any unfair labor practice relating to that conduct is barred by Section 10(b), it is unnecessary to provide for an affirmative order requiring the Respondent to furnish the information. *Reece Corp*., 294 NLRB 448 (1989).

I shall also recommend that the Respondent post an appropriate notice, inasmuch as its refusal was more than simply a legal issue between it and the Union. Cf. *Curtiss-Wright Corp.*, 145 NLRB 152 (1963).

[Recommended Order omitted from publication.]